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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 STEPHANIE MCCREA,

11 Petitioner,

12 v.

13 DEBORAH J. WOFFORD,

14 Respondent.

CASE NO. 3:18-cv-05054-RJB-JRC

ORDER GRANTING STAY

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16 The District Court has referred this petition for a writ of habeas corpus to United States  
17 Magistrate Judge J. Richard Creatura. The authority for the referral is 28 U.S.C. § 636(b)(1)(A)  
18 and (B), and local Magistrate Judge Rules MJR3 and MJR4. The petition is filed pursuant to 28  
19 U.S.C. § 2254.

20 On June 27, 2018, the District Court entered an order declining to adopt this Court's  
21 report and recommendation and re-referring the case to the undersigned magistrate judge. Dkt.  
22 12. The undersigned magistrate judge then addressed the fact that petitioner's habeas petition  
23 was a mixed petition, containing both exhausted and unexhausted grounds, and entered an order  
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1 to show cause. Dkt. 13. The Court asked petitioner to advise the Court whether she wished to  
2 dismiss her habeas petition and exhaust state court remedies, stay her case and exhaust her state  
3 court remedies, or whether she wished to withdraw her unexhausted grounds and continue  
4 forward with her exhausted grounds. *Id.* Petitioner has now filed a response indicating she  
5 wishes that her case be stayed. Dkt. 14.

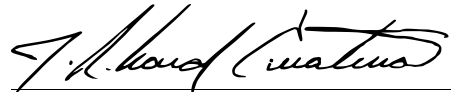
6 The Court has the authority to issue stays when such a stay would be a proper exercise of  
7 discretion, though this discretion is more limited in federal habeas proceedings. *Rhines v. Weber*,  
8 544 U.S. 269, 277 (2005). A district court may stay a petition if: (1) petitioner has “good cause”  
9 for failure to exhaust the claims in state court; (2) the unexhausted claims are potentially  
10 meritorious; and (3) there is no indication that petitioner intentionally engaged in dilatory  
11 litigation tactics. *Id.* at 278.

12 Here, petitioner meets these criteria. She explains that she is currently challenging her  
13 unexhausted grounds in state court and argues that her reason for her delay in filing a second  
14 personal restraint petition (“PRP”) is because state law has significantly changed since her  
15 original PRP. Dkt. 14. She also notes that the Washington Court of Appeals has transferred her  
16 PRP to the Washington Supreme Court to determine whether her argument can overcome the  
17 state statute of limitations. *Id.*; Dkt. 14-1. There is also no indication on the record that petitioner  
18 has engaged in dilatory litigation tactics. *See generally* Dkt. Because petitioner has shown good  
19 cause for her delay in exhausting her state court remedies, has shown her unexhausted claims are  
20 potentially meritorious, and there is no indication that she is engaging in dilatory litigation  
21 tactics, the Court finds that petitioner is entitled to a stay of her case while she exhausts her state  
22 court remedies.

1 Therefore, it is ORDERED:

- 2 1) Petitioner's request that her case be stayed is granted. This case is stayed until  
3 January 11, 2019.
- 4 2) Petitioner is directed to file a report advising the Court of the status of petitioner's  
5 PRP and, if necessary, a motion to extend the stay on or before December 28, 2018 –  
6 fourteen days before the stay ends.
- 7 3) Should the state court terminate review of petitioner's PRP, petitioner will inform the  
8 Court and file a motion to lift the stay within 30 days of the state court's decision.
- 9 4) The Clerk is directed to note the December 28, 2018 deadline on the docket for this  
10 case.

11 Dated this 9th day of July, 2018.

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15 J. Richard Creatura  
16 United States Magistrate Judge  
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